IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.94 OF 1992

Shri N.Ranganath ...Appellant

vs.

1.A.A.Khurshid
2.Sampatrao Gulabdas Mane
3.Oriental Fire and General
Insurance Company Ltd.
4.New India Assurance Company
Ltd Bombay ...Respondents

Mr.C.M.Lokesh for the Appellant
Mr.S.R.Singh for Respondent No.4.

CORAM: A.S.OKA,J.
DATE : DECEMBER 10,2007.

ORAL JUDGMENT:

1. Heard learned Advocates for the parties. The Appeal is by the original claimant in a claim petition filed under the Motor Vehicles Act,1939.

2. On 21st April 1985 the Appellant was travelling in a motor car along with his family members. There was a collision between the said car and the motor truck. The present Appeal has arisen out of a claim for compensation made by the Appellant on account of injury to his nose.

3. According to the claim petition filed by the Appellant, he suffered injury to his nose, head and arms and that he was required to be treated in the J.J.Hospital, Bombay for the said injuries. The claim for the compensation is in the sum

of Rs.50,000/-. According to the case of the Appellant for a period of two months he was forced to take leave as a result he has deprived of benefit of leave encashment. According to him two suit cases containing clothes and ornaments were damaged in the accident.

4. The claim was contested by the Respondents. The respondents are the owners of the car as well as the truck. The insurers of the both the vehicles have been impleaded as the Respondents. The finding recorded by the tribunal is that the accident occurred due to negligence on the part of the drivers of the both the vehicles. The contribution of the driver of the car is held to the extent of 70% and the contribution of the driver of the truck is held to the extent of 30%. The tribunal granted compensation of Rs.2000/- with interest thereon at the rate of 12% p.a.

5. The submission of the learned Advocate for the Appellant is that the tribunal has committed an error by holding that only injury suffered by the Applicant was to his nose. He pointed out that the Appellant suffered injury to his nose and the splinters of the glass had entered his two cheek bones and both his hands. He invited my attention to the case made out by the Appellant regarding damage to the suit cases and loss suffered by the Appellant in that behalf. He submitted that the Appellant had to take leave for 2 months and this aspect

was not considered by the tribunal. The learned counsel for the forth Respondent supported the impugned Judgment and Award by pointing that no interference is called for with the quantum of the compensation fixed by the tribunal.

6. The case papers of the J.J.Hospital produced on record of the Tribunal indicate that only injury suffered was a simple injury to the nose. Though the Appellant stated in his deposition that the splinters of the glass had entered his two cheek bones and both his hands, the medical papers are totally silent about the said injuries. The evidence of the Appellant shows that he was forced to take leave as he had to look after his injured wife. The evidence regarding the amount spent on medicines again relates to the injury sustained by his wife. On his own admission the Appellant was required to spend only a sum of Rs.100/- for his own medical treatment. In so far as the claims relating to loss on account of leave encashment and the amount spent on the medicines for his wife are concerned, the same will have to be looked into while hearing the Appeal for enhancement, if any, preferred by the wife of the Appellant. Therefore, compensation of Rs.2000/- awarded on account of personal injury to the Appellant is reasonable.

7. In the examination in chief the Appellant has deposed as under :

. "...My two suit cases were damaged, the extent of damage

being Rs.1,125/-. I could not use those bags afterwards. Clothes worth Rs.2000/- to Rs.3000/- were lost. Two gold bangles worth about Rs.4,000/- of my wife and two earrings worth Rs.1600/- of my daughter were lost."

8. In the cross examination there is no serious challenge to the said assertion made by the Appellant. The only suggestion given in the cross examination is that he had no evidence to show as to what was the cost of the suit cases. A suggestion is also given regarding missing bangles. However, the claim regarding loss of ornaments of his wife and daughter cannot be considered in the Appeal arising out of the claim of the Appellant. According to him, two bangles were owned by his wife and the earrings worth Rs.1600/- were owned by his daughter. However, there is no serious challenge to the that part of the examination-in-chief by which a case is made out that clothes were lost. Thus, the damage to the suit cases and loss of clothes has been established by the Appellant. Considering the simple injury sustained by the Appellant, no enhancement can be granted on that count. However, on account of damage to the suit cases and loss of clothes, a further sum of Rs.3,000/- deserves to be awarded to the Appellant. However, interest on the said claim will have to be fixed at the rate of 8% p.a.

9. Hence, Appeal is disposed of by passing the following

order:

i) In addition to the compensation awarded by the tribunal, the Appellant will be entitled to the amount of Rs.3,000/- from the Respondents together with interest thereon at the rate of 8% p.a. from the date of filing claim petition till realization of the amount.

ii) Inter-se liability of the Respondents will be as provided in the impugned Award.

iii) Time of three months is granted to comply with the modified Award.

iv) The Appellant will be entitled to proportionate costs of this Appeal from the Respondents.

v) Appeal is partly allowed in above terms.

vi) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE